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ABSTRACT

A recent court decision banned locally-owned newspaper/broadcasting combinations, or cross-ownership, and ordered divestiture to protect the public interest according to the First Amendment. However, these rulings promoting cross-ownership divestiture merit questioning for several reasons. First, evidence reveals that locally-owned television stations have served the public interest and have won awards in the categories of news, public affairs, and non-entertainment; divestiture would encourage outside ownership. Moreover, these rulings are in conflict with the Federal Communications Commission policy of local ownership. Finally, these rulings are based on a theory of the First Amendment that diversity always serves the common good, and this theory is open to varied interpretations. While antitrust statutes protect competition and economic diversity in business, media must market the freedom to speak ideas; joint efforts in this endeavor can serve the public interest in a positive manner. (HAI)

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Antitrust and the Media: The NCCB Decision

by

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On March 1, 1977 the D.C. Court of Appeals decided that the Federal Communications Commission (FCC) had erred in the past regarding its policies and rules toward newspaper-owned broadcast combinations.[1] Previous policy had allowed crossownership[2] structures to exist, except for several minor cases, unless a strong showing by the public could be made that such a combination was not in the "public interest." The court in NCCB stated such a policy was in error. The burden of proof, the court states, must not be on the public, but on the owners of such combinations.

The court agreed with a commission ruling that the agency had the power to ban such future combinations.[3] It stated this does not infringe on a newspaper's right to publish under the First Amendment. A ban on future newspaper-broadcasting combinations "neither mandates nor prohibits what may be published."[4] If such a ban affects the economics of the newspaper industry, the First Amendment cannot shield from that possibility. What must be protected is speech, and not the economic viability of newspapers or broadcast corporations.

The court then notes that the FCC had erred in not promulgating rules which would promote divestiture of newspaper-broadcasting combinations, and, in turn, diversity in speech. The 1975 rules had begun a move in this direction, but had not gone far enough. And,

> "...The Commission has sought to limit divestiture to cases where the evidence discloses that crossownership clearly harms the public interest....we believe precisely the opposite presumption is compelled, and that divestiture is required except in those cases where the evidence clearly discloses that crossownership is in the public interest."[5]

In all, 153 crossowned situations affecting 291 stations (135 AM's, 96 FM's and 60 TV's) are involved.[6] If the FCC does promulgate future rules as outlined by the court, it is difficult to conceive of a situation where the crossowners

could overcome the burden of proving their retention of these properties is so overwhelmingly in the public interest that no divestiture would be ordered. The contention by those opposing crossownership[7] is, then, that the future contains hope for improving the quality of broadcasting in America through a divestiture scheme promoting a "diversity of voices" in the community.

Is divestiture truly in the public interest? Rules promoting crossownership divestiture (1) ignore evidence that TV stations, at least, under these circumstances perform better than non-crossowned stations in several key programming categories, (2) violate the concept of local ownership in broadcasting, and (3) can only be based on First Amendment theory that diversity in fact is a "good" and, inter alia, crossownership per se violates this good.

Evidence presented to date has consistently shown that newspaper-owned TV stations do as well, and generally exceed, non-newspaper-owned TV stations in the categories of news, public affairs and non-entertainment programming.[8] These are the categories the FCC has identified as those best serving the public interest in programming. Market by market comparisons also reveal that,quantitatively, crossownership is a positive factor in promoting the public interest, as defined here, no matter where the TV station is located.[9]

Second, the FCC has long promulgated a policy of promoting local ownership in broadcasting. This is especially true where several applicants are competing for a broadcast license.[10] Industry sources predict one effect of NCCB, or any FCC rule incorporating the decision in NCCB, will be wholesale station trading.[11] For example, the Chicago Tribune Company will be seeking a trade with, say, the Washington Post Company involving the Tribune's local TV station, WGN, for the Post's local WTOP-TV.

In effect, 291 stations will pass from local ownership to the hands of outsiders unless local buyers can be found. But broadcasting is such a

profitable business that a company like the Tribune will not want to get out of it by selling to a local owner if it can trade and acquire another comparable property in another city. The commission may favor a local group bidding for the station in such a situation, but is just as likely to consider the plight of the Tribune Company here which would be forced to divest itself of its lucrative property by that same commission.

It can be thus argued that a divestiture rule encompassing all crossownership situations is in direct contravention with a policy of localism, and all the divestiture rule would accomplish is the establishment of an additional hundred or more absentee owners in broadcasting.

The critical argument in crossownership and multi-media ownership cases rests on the First Amendment. The inherent problem in First Amendment considerations is that passion often prevails, and no amount of evidence nor counter arguments will overcome that passion. Our fervor for protecting the rights enumerated in the First Amendment does not lend itself well to the evidentiary process.

The court in NCCB reaffirms the First Amendment theory that the greater the number of independent voices in the community, the better shall be our lot. Taken to its extreme, this theory would then dictate that one person, or one group of persons, shall own no more than one newspaper, or one TV, or one AM or one FM station and no more than one and absolutely no combinations at all will be allowed. That would be a policy of true diversity. But no court or group is willing to argue that the theory should be taken to that conclusion--yet. All the court contends in NCCB is that the First Amendment requires strictures be placed on those situations where, theoretically, an onerous relationship could exist. That is the city where the newspaper publisher controls the news and editorial content of one or more major newspapers in town, and one or several local broadcast outlets.

Given the possibility that such a situation has, or could, exist it is extremely difficult to argue the courts, or the FCC, should be more cognizant of evidence to the contrary, or countervailing policy, before moving. Congress, the courts, agencies all have a duty to act if such a clear and present danger is imminent. And in NCCB, apparently, the court agreed such a danger does exist. A monopoly of voices in a community is as onerous, or moreso, than any other monopoly. It was, therefore, under these contentions that the issues were enjoined, and the decision rendered.

Monopoly and Competition

In either an economic or legal sense it is not always clear to distinguish between what is meant by monopoly and by competition. A "pure" monopoly situation is one where one firm is the sole seller in the marketplace so that the buyer must meet the terms of the seller, or go without the product. The inherent evils in this type situation are not difficult to conceive, especially if the product is one in which society places high value, or in which there is a high need for health or other reasons, such as a milk monopoly.

Under this definition, the pure monopolist is rare. The most pervasive form of pure monopoly power exists in those categories of "natural" monopolies which are government sanctioned as the telephone, natural gas, light and cable television monopolies. For most products and services at least one other seller exists in the market.

However, the mere existence of at least one other seller may not be sufficient to totally satisfy the definition of competition. Two or more sellers may be marketing a product which, on the surface, appears alike, but for which consumers see as quite different in their purchasing habits.

Another problem with the definition is the term "market." Markets exist in

large variety. The courts have long wrestled with the problem of clearly defining a product or sales market for anti-trust purposes. In competition, in theory, no one firm or group of firms has the power to effectively set prices at higher than normal levels or provide less than normal service. The power of the marketplace will set prices and levels of service. If one firm's prices are too high, or service substandard, the buyer need only trade with a competitor in that market. But what constitutes a market area, or monopoly, or near-monopoly, power within that area?

In one case the Supreme Court disallowed the merger of two retail grocery chains where their combined sales in the market were only 7.5% of the total.[12] In general, the government defines the relevant market and defendants must then convince the court otherwise.[13]

In broadcasting the market is not as clearly defined as generally thought. Broadcasting executives speak in terms of "market" share, rank, ratings, sales and the like based generally on market definitions defined by Arbitron under the term ADI (Area of Dominant Influence). These ADI's are mapped out for the country. However, while there are 208 ADI's in the 48 contiguous states, the FCC identifies 274 television "markets" for its purposes of reporting quantitative data on news and public affairs programming.[14] So even in an industry where local service markets are allegedly defined there is variance in that definition depending on who is doing the defining.

These problems in definition have existed since 1890 and the passage of the Sherman Act.[15] In general the Act forbade combinations and conspiracies in restraint of trade, and monopolies or attempts to monopolize any part of trade or commerce among the states or with foreign nations. In 1914 Congress attempted to clarify enforcement and interpretation of certain provisions of the Sherman Act with passage of the Clayton Act[16] and the Federal Trade Commission Act.[17]

The Robinson-Patman Act[18] was passed in 1936 and it was aimed at price discrimination. The last major piece of anti-trust legislation was the Celler-Kefauver Act of 1950[19] which attempted to shore up possible discovered weaknesses in the Clayton Act.

Possibly more important than these legislative enactments has been the attitude of the courts, and especially the Supreme Court, toward anti-trust matters. Since 1957, 71 of the 79 antitrust decisions heard by the Court have been pro-competition, anti-business decisions.[20] Even under the more conservative Burger Court, the six antitrust decisions heard up to 1976 also resulted in pro-competition, anti-business outcomes.[21] Political scientists have long documented the theory that such outcomes of judicial decisions, especially those by the Supreme Court, do set policy guidelines for lower courts to follow, and have great influence on governmental policy in general.[22] When the courts are conducive to strict enforcements of legislation, as antitrust laws, the agencies charged with enforcement will feel more secure in pursuing these cases, and have the incentive to do so.

The two agencies specifically charged with enforcing the antitrust provisions of the Acts are the Justice Department and the FTC. Due to enforcement provisions of the several Acts, Justice and the FTC have been active in somewhat separate areas of antitrust, but there is considerable overlap. Both agencies also come under the influence of the current administrations in the vigor by which they pursue enforcement. Neither agency is totally free from this political influence.

Antitrust and the Media

The First Amendment does not protect the media from such actions as antitrust suits, just as the press is not exempt from zoning ordinances, property

and other taxes, or other legislative acts not singularly discriminatory toward the press.[23] While the press is the only industry singled out for Constitutional protection under the First Amendment, this privilege does not extend to it acting in violation of other sections of the Constitution, or the statutes, even when First Amendment protection is claimed. Thus, for example, the press may not act in constraint of trade, a violation of the antitrust statutes, under the guise of promoting the principles of the First Amendment.[24]

Just as the antitrust statutes exemplify the economic theory that competition within the marketplace of goods and services is to be promoted wherever possible, so too has First Amendment theory come to promote the concept that competition within the marketplace of ideas is to be promoted with equal vigor. One seller of milk is as onerous as only one seller of ideas. Justice Douglas writes in Dennis v. United States:

> "When ideas compete in the market for acceptance, full and free discussion expires the false and they gain few adherents. Full and free discussion even of ideas we hate encourages the testing of our own prejudices and preconceptions. Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart."[25]

The marketplace of ideas concept had been a fundamental basis for the guarantee of freedom of speech and press for 25 years or so before Dennis.[26]

Inherent in the idea of a marketplace of ideas is the concept of a "multitude of tongues" speaking those many ideas.[27] Judge Hand reaffirms the idea that the greater the diversity in the press, the greater the number of media outlets, the greater the likelihood the truth will emerge from ideas and the Republic will be preserved. Judge Hand adds, "(t)o many this is, and always will be folly; but we have staked upon it our all."[28]

In Associated Press the Court agrees with Hand's conclusion that a policy of promoting the greatest diversity of media voices possible is the best one

under our democratic system as what must be stressed is "the widest possible dissemination of information from diverse and antagonistic sources."[29] The Court reaffirmed this idea in Red Lion when it stated,

> "It is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee."[30]

The Communications Act of 1934 states the Commission must be cognizant of antitrust statutes, and act in a manner to preserve competition through the commission's licensing powers.[31] In effect the commission has, to a point, opted for competition in broadcasting by refusing to establish a system of powerful regional radio stations, instead it has established our current pattern of many local radio stations. Early on the commission took it upon itself to regulate in a manner which would prevent monopoly and preserve competition.[32] The Court further recognized in "The Network Case" that the "public interest" doctrine contained in the Act of '34 gave the commission plenary jurisdiction to promote competition in broadcasting.[33] It further upheld this jurisdiction after the commission, in 1953, limited the number of television, and AM and FM radio stations any one owner, or group owner, could control.[34]

While the commission is not directly empowered to enforce the antitrust statutes, the courts, and Section 313 of the Act of 1934, have stated the commission must be cognizant of these statutes when exercising its powers of granting or removing broadcast licenses in the public interest.[35] In Mansfield Journal the court alerted the commission to be especially cognizant of possible antitrust violations in those markets later defined as "egregious."

The commission has stated a goal of promoting a wide diversity in broadcast programming[36] and such diversity of programming goals can also be extended to diversity of ownership when considering competing applications for new broadcast

licenses.[37] However, throughout these years the commission consistently indicated that the policies laid down would not bar crossownership or multi-media ownership, nor would such ownership arrangements aid a licensee. Then, too, comparative hearings were treated differently from license renewals, and while newspaper ownership was a factor in several cases denying a new license to a newspaper owner-applicant,[38] no license had ever failed to be renewed solely on the crossownership or multi-media ownership issue.

In 1968 the commission began hearings on this issue with a Notice of Proposed Rulemaking.[39] On March 25, 1970 it issued its First Report and Order on multiple ownership.[40] This First Report and Order addressed multi-media ownership only. It prohibited future VHF-TV and radio combinations in the same market, but left AM-FM radio combinations intact. UHF-TV and radio combinations in the same market would be handled on a case-by-case basis. The 1970 Rules did not require divestiture of then present combinations, and did not address newspaper-broadcast combinations.

On the same day as the First Report and Order the commission issued a Further Notice of Proposed Rulemaking[41] which would address the problem of newspaper-broadcasting crossownerships in the same market. That Further Notice resulted in the 1975 order which became the first notice that crossowners must begin to divest.

The 1975 Divestiture Order

The 1975 amendments to the Multiple Ownership Rules[42] were the first to order the breaking up of existing crossownership structures. In all, 16 newspaper-broadcasting combinations were affected. The 1975 Rules gave these combinations five years to divest themselves of their TV, AM-FM stations, or newspapers. This 1975 order was highly selective in that it concentrated only on those egregious cases where the community was served primarily by only one

newspaper, and one TV or radio station (or AM-FM combination). All of these 16 combinations were located in small markets around the country. And this may have been a primary factor in the FCC's willingness to take such a step.

The commission majority noted in its 1975 decision that it was only willing to take this step in those situations where monopoly media power could be deemed overt. No action would be taken in such areas as Milwaukee or Atlanta, for example, where one corporation owned both the morning and afternoon newspapers, one network affiliated TV station in town, and an AM-FM combination. The fact that these "big guys" were to be left alone brought immediate reaction and charges the FCC was picking on the "little guys" again for they were most vulnerable.

In fact, the trade press sighed relief at the 1975 order.[43] Broadcasting, in its editorial, noted that, "It could have been worse." Two commissioners in dissent, and several parties to the case, claimed the divestiture order did not go far enough.[44] These arguments for further divestiture, then, set the stage for the NCCB decision.

The Concentration of Ownership Question and NCCB

The constantly recurring antithetical stand against media corporations which own several newspapers, broadcast stations, or combinations thereof draws many supporters for media concentrations violate not one, but two, underlying tenets of capitalistic and democratic faith. The first tenet is that "bigness is bad." All companies larger than the corner mom-pop grocery store are somewhat suspect in the minds of many capitalistic purists. Coupling this suspicion with the media situation where the company owns more than one mom-pop newspaper or radio station adds to the suspicion for in the media case our company is not in the mere produce and meat business, but is marketing a much more precious commodity--the freedom to speak ideas.

This clash of the realities of the marketplace of economics and the marketplace of ideas has brought mixed reactions from the courts and legislatures. The year 1969 was traumatic in this regard for both publishers and broadcasters.

For publishers the case of Citizen Publishing Company[45] brought forth the hue and cry. In Citizen the Court considered the question of joint operating agreements among newspapers in the same city. In order to save money, by 1969, 44 daily newspapers in 22 cities had entered into agreements where they would share costs of operation by operating their non news-editorial departments jointly (primarily the advertising, circulation and printing departments). Citizen published the only afternoon newspaper in Tuscon, and entered into such an agreement with Star Publishing Company, the publisher of the only morning newspaper in Tuscon.

The Court on Citizen found this arrangement in violation of Section 1 of the Sherman Act. The decision created panic among the newspaper publishers. The question in Citizen was what could be done to preserve the newspaper when it no longer remained an economically viable entity. Citizen tried to show it had incurred substantial losses for at least eight years prior to the agreement with Star. Since the agreement and arrangement had been in operation both newspapers apparently were in sound financial condition. Many other newspapers around the country found themselves in similar straits. The number of daily newspapers had been declining since about 1900, while weeklies were holding fairly steady.[46] The newspaper's share of the advertising market had also been declining and costs were rising. In Citizen the Court declared unlawful the efforts of many newspapers to stay in business.

The remedy sought by the publishers was legislative relief. In 1971 Congress provided this relief in the passage of the "failing newspaper act."[47] Under this Act newspapers enjoy special exemption from the antitrust laws in those cities where joint operating agreements are in effect.

The Act may have saved many newspapers from the greatest prior restraint possible--going out of business. But it can also be argued that two newspapers so closely joined in all departments other than news and editorial could hardly be thought to be independent in the key news-editorial department.[48] In any case the Act remains as a protection for a certain class of publishers with the First Amendment question of a "multitude of tongues" under such conditions unanswered.

Broadcasters too were shocked in 1969. The FCC took an unprecedented step that year in removing the television license of a major broadcast outlet partially on the basis that the former licensee was the owner of a local newspaper.[49] There were many factors involved in WHDH, but one was the concentration of ownership issue.[50] The fact that the Boston Herald-Traveler owned WHDH-TV in Boston weighed heavily in the final decision by the FCC to award the license to another group without other media connections. The fact that the FCC would take such an action against a major station in a major market in the first place, brought forth a substantial hue and cry from the broadcast industry. Publishers were no less concerned. Like the publishers in the aftermath of Citizen, the broadcast industry immediately went to Congress for relief after WHDH.[51] The FCC itself passed rules giving current licensees a favored position at renewal time, and this placated the industry and the Pastore Bill was withdrawn.

However, none of these actions appeared to diminish the growing public demand that media concentrations be broken up.[52] Citizens groups which gained, at least, standing before the FCC in 1966[53] have continued to press for a reduction in media concentration by that body. But the commission apparently had gone as far as it had intended to go in ordering any divestitures with its 1975 Rules. And, so, a citizens lobby (NCBB) went to court.

The March Court of Appeals decision brought the expected reaction from the industry. The Court noted in its decision that the 1975 Rules left 90% of

all combinations grandfathered until such time as the local owner decides to divest himself of one of the properties. Broadcasting magazine felt this was a proper way to view the problem.[54] This trade publication claimed the marketplace would take care of the situation in due time, and that court ordered divestiture on the scale stated in NCCB is "cruel and unusual punishment" for owners.[55] The implication of the editorial, and comments on the situation elsewhere, is that the court is substituting its judgement for that of the FCC, and that under administrative law and procedure the court cannot order an independent regulatory agency to act on matters within its (the agency's) purview.

If the industry believes the courts cannot act to order the FCC into action, it has a short memory. In 1969, then Judge Burger of the D.C. Court of Appeals wrote a chastising decision ordering the FCC to act to remove the license of WLBT Jackson, Mississippi for failure to program to minorities in the community.[56] This also raised considerable consternation in the broadcast industry at that time, and after, for broadcasters were put on notice by this action that they had better begin to consider all segments of their audience in programming, employment and elsewhere in the future. Administrative law clearly gives the courts the powers to overrule regulatory agency decisions, and to order them to act on matter they had chosen to ignore.[57]

Just as predictable has been the reaction from the citizens lobby. NCCB feels it won a great victory in the decision and has taken a giant step toward righting a major wrong in the broadcast industry.[58] Notwithstanding the appeals process or the amount of time it will take the FCC to finally act on the matter and divestiture to finally take place in all cases, proponents of divestiture certainly must feel that the future configuration of broadcast ownership will be much better through this court decision.

Notes and Comments

The prediction is that nothing can, or will, happen on this matter for many years to come. Appeals are surely in order for a Supreme Court decision on the matter. But, given the language of the ruling, a test case before the FCC under the petition to deny process is also in order.

Given the probability that the divestiture scheme outlined by the court will eventually come about, what will the future likely hold? One probability sure to come about is the reduction of scores of local broadcast owners to mere absentee owners in hundreds of communities. Many of these crossowned stations are the very same ones which year after year win the awards for local programming, investigative reporting, and public service. The question is, will the corporate absentee owner be as concerned about the product aired daily in some distant city as he might be when that product comes into his home daily?

Group ownership, or absentee ownership, can be arguable as violative of Constitutional precepts as crossownership. The recent purchases of Australian publisher Rupert Murdoch again brought to rise the fact that more and more the newspaper owner with only one property is becoming a relic of the past. The recent purchases of the eight Booth newspapers in Michigan by Newhouse, and the Speidel newspapers by Gannett (giving Gannett over 70 newspapers nationwide) merely adds fuel to the argument that the court decision in NCCB is paltry compared to the existence of a real clear and present danger elsewhere. Why have not the courts and Justice Department seen fit to act to break up the real media conglomerates as the networks with their owned and operated stations, and these large newspaper and broadcast chains, and instead set their sights on these crossowned stations alone? Three-fourths of all TV stations in the top 100 markets are group owned.[59] How much diversity is there in broadcasting when such conglomerate owners really control the programming of nearly 90% of all television

households and one group is allowed to own 70 or more newspapers? If we seriously desire to guarantee our First Amendment freedoms under the rubric of "diversity," we would immediately begin to tackle the media conglomerate problem.

The WHDH decision resulted in the collapse of the Boston Herald-Traveler. Without its lucrative broadcast property to make up for losses at the newspaper, the newspaper had to close. The court in NCCB says this is not a First Amendment problem. But it is for a promulgation of a policy by a federal agency which will result in the failure of several or many newspapers across the country can hardly be shrugged off with platitudes about free enterprise and market economics. Serious consideration must be given the fact that the public interest just may not be served through the failure of the local newspaper under a divestiture scheme designed, in theory, to promote that same public interest.

It is a difficult question to consider when the marketplace of ideas and the marketplace of economics clash. Should one crossowner be successful in his claims that divestiture will force him into closing his newspaper, and the FCC grant a waiver in this one case, all others would likely make the same claim and seek the same waivers. Then nothing would have been accomplished.

The problem is that if no waivers are allowed and newspapers do begin folding after they divest, it is too late to return to save this most precious local medium. Certainly other papers may rise to fill the void, or the newspaper corporation could invest its profits from the sale of its broadcast properties in other, non-broadcast, areas, but if they do begin to fail, how have we progressed toward insuring the viability of our "multitude of tongues?"

A final note here in that the newspaper industry has tried to balance First Amendment theoretical considerations with a theoretical consideration of its own. A newspaper owner may just possibly be the best possible type owner conceivable. The business of the newspaper is news. The business of the broadcaster is

entertainment. The newspaper owner, steeped in the tradition of news emphasis for profit maximization, could conceivably carry this tradition over to his broadcast properties. The newspaper-owned TV station from sign-on to sign-off carries more non-entertainment programming than the non-newspaper owned station in nearly every market in the country.[60] And non-entertainment programming is the type programming the FCC states is in the public interest. It is not inconceivable that the newspaper owner places far greater emphasis on local broadcast news and public affairs programming because of his orientation through the newspaper, and his desire to see that station as the best in this area in the market.

However, all arguments and considerations to the contrary notwithstanding, the court has opted for a promulgation of divestiture. And, to reiterate Judge Hand's observation,"...to many this is, and always will be folly; but we have staked upon it our all."

[1]National Citizens Committee for Broadcasting v. Federal Communications Commission et al. No. 75-1064 (D.C. Cir.), ___F.2d ___(D.C. Cir. 1977). Hereafter referred to as NCCB.

[2]The term "crossownership" herein will be used to refer to situations where a newspaper owns a broadcast outlet. "Multimedia" ownership will refer to the situation where broadcasters own other broadcast properties.

[3]Multiple Ownership Rules. Docket #18110, 50 FCC 2d 1046 (January, 1975).

[4]No. 75-1064 at 32.

[5]Id at 60.

[6]Broadcasting, March 7, 1977. p. 22.

[7]See Nicholas Johnson and James M. Hoak, Jr., "Media Concentration: Some Observations on the United States Experience," 56 Iowa Law Review 267, 1970. Bruce Owen, "Newspaper and Television Station Joint Ownership," 18 Antitrust Bulletin 807, 1973.

[8]Michael [illegible]. Wirth and James A. Wollert, "Public Interest Performance of Multimedia-Owned TV Stations," Journalism Quarterly, Vol. 53, No. 2 (Summer 1976), pp. 223-30; Paul D. Baldridge, "Group and Non-Group Owner Programming: A Comparative Analysis," Journal of Broadcasting Vol. 11 (Spring 1967), p. 125.

[9]Wirth-Wollert, Id.

[10]Policy Statement on Comparative Broadcast Hearings. 1 FCC 2d 393 (1965).

[11]Broadcasting, March 7, 1977 p. 21. Wall Street Journal Wednesday, March 2, 1977, p. 13.

[12]United States v. Von's Grocery Co., 384 U.S. 270 (1966).

[13]United States v. Aluminum Co. of America 148 F. 2d 416 (Second Circuit, 1945); United States v. E.I. du Pont de Nemours & Co. 351 U.S. 377 (1956); United States v. Grinnell Corp. 384 U.S. 563 (1966).

[14]Source, FCC data.

[15]26 Statute 209, 15 U.S.C.A. Sec. 1-7 (1890)

[16]38 Statute 730, 15 U.S.C.A. Sec. 12-17 (1914)

[17]38 Statute 717, 15 U.S.C.A. Sec. 41-51 (1914)

[18]49 Statute 1526, 15 U.S.C.A. Sec. 13, and 49 Statute 1528, 15 U.S.C.A. Sec. 13 (a) (1936)

[19]66 Statute 632, 15 U.S.C.A. Sec. 45 (1952)

[20]David W. Rohde and Harold J. Spaeth. Supreme Court Decision Making. (San Francisco: W.H. Freeman and Company, 1976), p. 150.

[21]Id.

[22]Id, Chapter I.

[23]Grosjean v. American Press, 297 U.S. 233 (1936).

[24]Lorain Journal Co. v. United States, 342 U.S. 143 (1951); Mansfield Journal Co. v. FCC, 180 F. 2d 28 (D.C. Cir. 1950); Times-Picayune Co. v. United States 345 U.S. 594 (1953).

[25]Dennis v. United States, 341 U.S. 494, 584 (1951), (Douglas, J., dissenting).

[26]See concurring opinion of Brandeis, J. in Whitney v. California, 274 U.S. 537 (1927).

[27]United States v. Associated Press, 52 F. Supp. 362 (S.D.N.Y. 1943).

[28]Id.

[29]Associated Press v. United States, 326 U.S. 1, 20 (1945).

[30]Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969).

[31]47 U.S.C. 313 and 314.

[32]FCC v. Pottsville Broadcasting, 309 U.S. 134, 137 (1940); FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 474-76 (1940).

[33]National Broadcasting Co. Inc. v. United States, 319 U.S. 190 (1943).

[34]United States v. Storer Broadcasting, 351 U.S. 192 (1956).

[35]United States v. RCA, 358 U.S. 334 (1954). See also Mansfield Journal.

[36]Commission en banc Programming Inquiry (1960 Programming Policy Statement), 25 Fed. Reg. 7921 (July 29, 1960).

[37]Policy Statement on Comparative Broadcast Hearings. 1 FCC 2d 393 (1965).

[38]Plains Radio Broadcasting Co. v. FCC, 175 F. 2d 359 (D.C. Cir. 1949); Scripps-Howard Radio, Inc. v. FCC, 189 F.2d 677 (D.C. Cir. 1951).

[39]33 Fed. Reg. 5315 (1968).

[40]22 FCC 2d 306 (1970).

[41]22 FCC 2d 339 (1970).

[42]Docket No. 18110. 50 FCC 2d 1046 (1975).

[43]Broadcasting, Feb. 3, 1975. p. 82.

[44]Statement of Benjamin L. Hooks (50 FCC 2d 1108), and Glen O. Robinson (50 FCC 2d 1113) concurring in part and dissenting in part. Also see Broadcasting, Feb. 3, 1975. pp. 23-24.

[45]Citizen Publishing Company v. United States, 393 U.S. 131 (1969).

[46]Bruce Owen, Economics and Freedom of Expression. (Cambridge, Mass.: Ballinger, 1975), Chapter II.

[47]The Newspaper Preservation Act, 15 U.S.C. 1801 et seq. (1971).

[48]For a discussion see Donald M. Gillmor and Jerome A. Barron, Mass Communication Law. (St. Paul, Minn.: West, 1974), p. 665.

[49]WHDH, Inc. 16 FCC 2d 1, 15 RR 2d 411 (1969).

[50]Hyman H. Goldin, "'Spare the Golden Goose'--The Aftermath of WHDH in FCC License Renewal Policy," 83 Harvard Law Review (March 1970).

[51]S. 2004, 91st Cong., 1st Session.

[52]See, for example, Robert L. Bishop, "The Rush to Chain Ownership." Columbia Journalism Review (November/December, 1972).

[53]Office of Communication of the United Church of Christ v. FCC 359 F. 2d 994 (D.C. Cir. 1966).

[54]Broadcasting, March 7, 1977. p. 90.

[55]Id.

[56]Office of Communication of the United Church of Christ v. FCC 425 F. 2d 543 (D.C. Cir. 1969).

[57]Kenneth Culp Davis, Administrative Law and Government (2nd Ed.) (St. Paul, Minn.: West, 1975).

[58]Broadcasting, March 7, 1977. p. 21.

[59]Herbert H. Howard, "The Contemporary Status of Television Group Ownership." Journalism Quarterly (Autumn 1976), p. 399.

[60]Wirth-Wollert, "Public Interest Program Performance."